

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES
February 1, 2011

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, February 1, 2011, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert C. Gibbons in the Board of Supervisors Chambers. Mr. Gibbons introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Gibbons stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Ernest Ackermann, Robert Gibbons, Marty Hudson, Larry Ingalls, Ray Davis and Paul Ortiz, Steven Apicella and Heather Stefl

Members Absent: Karl D. Larson

Staff Present: Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Aisha Hamock, Recording Secretary

Mr. Gibbons: It is 7:00 PM and we will start the meeting with Ms. Hudson, the Zoning Administrator, who requested that she be allowed to address the board.

Ms. Hudson: Thank you Mr. Chairman. I wanted to come this evening because I have not been for a couple of months to your meeting and I wanted to briefly tell you that I will be attending meetings on occasion periodically depending on what the cases are. As you know, Melody is the staff representative from the department. It is her responsibility to staff the BZA and any questions that you all might have regarding the cases should be addressed to her at the meeting. If she should not be able to answer your questions, she would get back with me and we will discuss it and she will get back with you if you have a particular question or an issue. If you have any questions of me, please email me or call me and I would be more than happy to talk to any of you regarding the cases or subjects that you might have that need discussion with me. I hope you have read this memo, to begin with it starts out with the Magee case that you heard in September and explaining how and why the motion and the vote failed to be approved or denied. Then an explanation of if you had continued and voted on the motion to approve what the outcome could have been for the vote. I also wanted to let you know...

Mr. Gibbons: Any questions on this memo?

Mrs. Stefl: I do have one question. If we ask Melody and she is unable to answer and she has to get ahold of you, how is that going to affect then our vote for the evening? Would we table the issue then?

Ms. Hudson: Are you asking that of me?

Mrs. Stefl: I am kind of asking... I'm throwing it up here to the Board?

Mr. Gibbons: Yeah, I guess that is the dilemma we are in right now.

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Ms. Hudson: I would hope that would not happen, I mean, she knows the cases and she is the one that takes the application in.

Mrs. Stefl: Okay.

Ms. Hudson: She is the one that talks with the applicant; she reviews everything with those cases. The appeals, if they are appealing my determination, I would think that is a little bit different.

Mrs. Stefl: Okay.

Ms. Hudson: She is more familiar with these cases that she has worked with than I am.

Mrs. Stefl: So maybe that is when we will probably see you is when there is a determination question?

Ms. Hudson: Could be, yes. Like I said, I will be dropping in and out.

Mrs. Stefl: Okay.

Ms. Hudson: Anything else regarding that?

Mr. Ingalls: I guess I am not quite comfortable with all that. With all do respect, as good as Melody knows the cases and everything like that, is she speaking for the County on behalf of the Zoning Administrator? I feel like her title is not Zoning Administrator.

Ms. Hudson: I know that.

Mr. Ingalls: Her title is not Assistant Zoning Administrator.

Ms. Hudson: And I have served with the Board of Zoning Appeals for twenty some years and my title was not always Assistant Zoning Administrator or Zoning Administrator. Hopefully her title will be changed. I have been trying to get a title change now for three years; I do have a package up in HR and hopefully that will happen because she is not a technician and that is her title. But that...

Mr. Gibbons: Can you change the PDE for her?

Ms. Hudson: What?

Mr. Gibbons: Did you change her PDE?

Ms. Hudson: What is PDE?

Mr. Gibbons: That is her job description.

Ms. Hudson: She has additional duties in her job description.

Mr. Gibbons: So you requested that she be changed to Assistant Zoning Administrator?

Ms. Hudson: No sir.

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Mr. Gibbons: What...

Ms. Hudson: I am not at liberty to say that because it is under advisement with County Administration and the HR people. When and if it happen, which I certainly hope it will, you will be notified of that. I don't... I mean, she has had years of experience in the zoning department. I don't and Jeff...

Mr. Gibbons: But Rachel, the request from the Board is that they would like to see you at the meeting. They have asked that, I went to the County Administrator and I went to Jeff and Jeff said that the only problem he thought you had was that when you made a determination that you shouldn't be present because it could conflict with what your ruling was. We have gone on record that we would like to have you here. If there is a reason that you don't want to be here then that is acceptable and I will ask Anthony if she is up for a job description change or an appointment then that is fine too. I just wanted to let you know that...

Ms. Hudson: I don't think the job description title should affect anything. I think it is her knowledge of zoning and her knowledge of the cases. I am just letting you know that I have been working on for some time a change for her title.

Mr. Gibbons: Okay.

Ms. Hudson: I feel... When I am at the meetings I feel that you all are asking me as Zoning Administrator questions that your staff person can answer.

Mr. Gibbons: Okay. We understand that.

Ms. Hudson: And at a public meeting, I shouldn't be trying to make a decision or determination. I can give you answers if Melody can't answer those questions. If they are legal questions, perhaps neither one of us will answer those questions.

Mr. Gibbons: Right.

Mr. Davis: That brings up another point because we have asked for legal representation.

Ms. Hudson: Have you formally asked?

Mr. Gibbons: Yes and I checked today and Charlie is taking that to the Chairman. They have a candidate, local here and they (Inaudible)

Mr. Davis: They told us that six months ago.

Mr. Gibbons: No, the County Attorney retired so the new one is looking at it.

Mr. Davis: So he is taking it forward?

Ms. Hudson: To the Board?

Mr. Gibbons: Yes and we will try to get it to you in two weeks.

Ms. Hudson: Hopefully... I would like to see that happen for you.

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Mr. Gibbons: Okay.

Ms. Hudson: I just jotted down on this memo the cases that have been... the 7-Eleven Hills of Aquia appeal of the Board's denial of the front yard Variance. It is set for court on November 1, 2011. The appeal of the Zoning Administrator's vesting determination for Chesapeake Stafford and Associates in Wyche Industrial Park that was overturned by the BZA September 28, 2010 has been appealed the Circuit Court by the Stafford County Board of Supervisors as well as the appeal of the Director of Planning and Zoning's verbal determination pertaining to dedication of the ultimate right-of-way that was partially upheld by you folks in September.

Mr. Gibbons: Is the sign case up in North Stafford set for March?

Ms. Hudson: There is no sign case. It has been dropped. Are you talking about the Christy Farms?

Mr. Leming: That is set for April.

Mr. Gibbons: April?

Ms. Hudson: It is?

Mr. Leming: That is not the appeal of this Board's decision that is an issue regarding the enforcement of the ordinance.

Ms. Hudson: I am not... I have not been advised of that.

Mr. Leming: That was filed by us. The Board is in the case as is Seven Lakes Estates but it not an appeal of... those appeals were dropped of both the Seven Lakes Estates and the Board of Supervisors.

Ms. Hudson: Right, I was not aware of that.

Mr. Gibbons: (inaudible) by association and to make sure it was enforced.

Ms. Hudson: For enforcement.

Mr. Leming: There has been no effort to set a date on the previous two cases.

Ms. Hudson: Right.

Mr. Gibbons: Okay, is there anything...

Ms. Hudson: Will I be getting something from the court?

Mr. Leming: I think that what you're talking about...

Ms. Hudson: Regarding the HCS?

Mr. Leming: I think the Board's position is they shouldn't even be in the case. It ought to be between Seven Lakes and Seven Lakes Estates.

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Ms. Hudson: I will talk to Charlie. The final order that was signed by Judge Bass December 29 regarding the Norman Road Salvage Yard overruled the decision of the Stafford County BZA to uphold the Zoning Administrator's determination regarding the crushing and the draining operation so that is done. The County's request for a permanent injunction was denied so that case is finished as far as I know.

Mr. Gibbons: Any other questions of Rachel?

Mr. Ortiz: I'm sorry, in the 7-Eleven case, can you refresh us? Do we do that?

Ms. Hudson: You did. That was at Hills of Aquia and that was for the front setback along Jeff Davis and it was denied. They have appealed it to the Circuit Court and the date for that court is November.

Mr. Ortiz: Okay, I'm sorry.

Ms. Hudson: November 1, 2011.

Mr. Ortiz: Thank you.

Ms. Hudson: You're welcome.

Mr. Gibbons: Okay, then we will open the meeting. Are there any changes to the advertised agenda?

Mrs. Musante: There are no changes.

Mr. Gibbons: Before we hear the first case, does any Board member wish to make any declarations or statements concerning any cases heard before the Board tonight? Mr. Ingalls?

DECLARATIONS OF DISQUALIFICATIONS

Mr. Ingalls: Mr. Chairman, in case V10-5/1000242, Ryan Magee, the applicant is represented by Mr. Clark Leming at the firm of Leming and Healy, PC. Over the years and from time to time, the firm that I recently retired from Sullivan, Donahoe and Ingalls has shared the same clients as Mr. Leming and his firm. Sullivan, Donahoe and Ingalls has not worked with Mr. Leming on this application, I do not personally represent Mr. Leming's firm or the applicant and I have not had any contact with Mr. Leming concerning any matters before this Board, therefore I am able to participate fairly and objectively and in the public's interest in this case before the Board. Also, in case SE11-1/1100001, the firm that I recently retired from Sullivan, Donahoe and Ingalls provided services to the applicant and therefore I am going to abstain from participating in voting on this case.

Mr. Gibbons: Thank you Mr. Ingalls. Anybody else? Okay, hearing none, I will ask the secretary to read the first case.

PUBLIC HEARINGS

1. **V10-5/1000242 - RYAN P MAGEE** - Requests a Variance from Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards", R-1, Suburban Residential, of the side yard setback and Section 28-38(c) "Performance regulations, Accessory Buildings/Structures", to allow an accessory structure to remain closer than the required ten (10) feet of any other structure located on Assessor's Parcel 22D-2A-287. The property is zoned R-1, Suburban

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Residential, and is located at 44 Barclay Lane, Stonebridge at Widewater Subdivision.

Mrs. Musante: Mr. Gibbons, the first case is Ryan Magee and in this case the public hearing has actually been closed. We do have a conclusion on this case, the vote back in September was three to three so basically what we need to do is take a new vote, a new motion.

Mr. Gibbons: Is there any questions of staff?

Mr. Ackermann: So, since the public hearing was closed we take no further information from the public, right?

Mr. Gibbons: Right.

Mr. Ackermann: It is for us to decide?

Mrs. Musante: Correct.

Mr. Ackermann: And nothing has changed in the application? In terms of how close it is to the house?

Mrs. Musante: Nothing has changed. You did have something sent from Mr. Leming's office.

Mr. Davis: I was not at the meeting but I have read the case several times as well as the minutes so that I can adequately represent.

Mr. Ortiz: Mr. Chairman, that would be the same thing for me as well.

Mr. Apicella: Likewise but I do have a question.

Mr. Gibbons: Go right ahead.

Mr. Apicella: This setback requirement is based on the lot boundaries, not where the easement is placed, right?

Mrs. Musante: It is from the property lines.

Mr. Apicella: From the property lines?

Mrs. Musante: Correct. Mr. Gibbons, Mrs. Stefl actually did vote on this in September so I am not sure whether she should vote on this or Mr. Apicella?

Mr. Gibbons: We never got to the main vote.

Mrs. Musante: Correct.

Mr. Gibbons: So I think Mr. Apicella would be fine.

Mrs. Musante: Okay.

Mr. Gibbons: Mr. Ackermann you did make the original motion.

Mr. Ackermann: The motion I made was... What was the motion I made? To accept or deny?

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Mrs. Musante: Give me just a second please.

Mr. Ackermann: Sure.

Mrs. Musante: The original motion was to not grant a variance.

Mr. Ackermann: Okay.

Mr. Gibbons: Who made that motion?

Mrs. Musante: Mr. Ackermann.

Mr. Ackermann: Okay.

Mr. Gibbons: Okay.

Mrs. Musante: That motion failed.

Mr. Ackermann: I see. And we took no motion to grant the variance?

Mr. Gibbons: That is correct. We never voted on the motion.

Mr. Ackermann: We never voted on the motion, right.

Mrs. Musante: Correct.

Mr. Ackermann: Since nothing has changed, I believe my reasoning on it that the shed was really too close to the house in terms of what the zoning ordinance is. It needs to be separated from the house by a further distance than it was, that was my primary concern and that is why I made that motion.

Mr. Gibbons: So you are making a similar motion tonight sir?

Mr. Ackermann: I think if I make the same motion and it passes four three then that's sufficient?

Mrs. Musante: Correct.

MOTION:

Mr. Ackermann: Okay, I see, then I would be happy to make the same motion.

Mr. Gibbons: Mr. Ackermann made the motion, is there a second?

Mr. Ortiz: I second it.

Mr. Gibbons: Second by Mr. Ortiz. Discussions, any discussion?

Mr. Ingalls: Mr. Chairman, I am going to support the motion to deny because I think that this does not meet the test and requirement for a variance. It is way too close, it does not prevent the applicant from using his property, he has a garage, it's not like he doesn't have useable use of his property. He can use his garage or whatever, he doesn't have to have a shed in addition to his garage. The closeness of the shed to the house is a safety issue and the closeness to adjacent properties is also a safety issue. For

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those reasons I will support the motion.

Mr. Chairman: I concur with Mr. Ingalls, I think the same points.

Mr. Gibbons: Mr. Hudson?

Mr. Hudson: No, I disrespectfully feel like I did the last time. It is kind of hard to say that we closed the hearing, yet we got the letters in the file from the neighbors. It's like we don't read them I guess. There are letters in here from everyone who lives around him, which is my neighborhood, that don't have a problem with it and I guess if this shed was set up on wheels and wasn't moveable it would be a trailer and I am not sure he could set it there. I can't support the motion because I do think the drainage problem and the right-of-ways that is in his back yard wouldn't allow another place on that property to set a shed. If the neighbors felt different about I would probably feel different about it but I can't see how it could sit back there on those right-of-rights in the photos provided. I can't support the motion.

Mr. Gibbons: Mr. Davis?

Mr. Davis: I support the motion because I do not feel that it is a hardship. As we trained and re-trained last night, it has to be a hardship.

Mr. Gibbons: Any other discussion? I will call for the questions. All in favor say aye.

Mr. Ackermann: Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Mr. Gibbons: Aye.

Mr. Ingalls: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: All opposed.

Mr. Hudson: No

Mr. Gibbons: The vote passes 6-1. Case number two please.

VOTE:

The motion to deny the Variance passed 6-1.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – No

Mr. Ingalls – Yes

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Mr. Ortiz – Yes

2. **V10-07/1000374 - AMANDA & RONALD ROWE** - Requests a Variance from Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards", R-1, Suburban Residential, of the rear yard requirement to construct an addition to an existing single-family dwelling on Assessor's Parcel 19R-3. The property is zoned R-1, Suburban Residential, located at 12 Pickett Lane, Gables at Augustine Subdivision.

Mrs. Musante: Case V10-07/1000374, Amanda and Ronald Rowe, requests a Variance from Stafford County Code, Section 28-35, Table 3.1, "District Uses & Standards", R-1, Suburban Residential, of the rear yard requirement to construct an addition to an existing single-family dwelling on Assessor's Parcel 19R-3. The property is zoned R-1, Suburban Residential, located at 12 Pickett Lane, Gables at Augustine Subdivision. You have the application, application affidavit, owner's consent form, subdivision plat, construction plans, letters from adjacent property owners, photos of the property, tax map and vicinity map. The applicant is requesting a variance of nine (9) feet of the rear yard setback to construct a proposed twelve (12) by twenty-five (25) foot sunroom addition. The required rear yard for this zoning is thirty-five (35) feet. The proposed sunroom would be twenty-six (26) feet from the rear property line. This is a corner lot which limits the buildable area. The setbacks for this lot are front, thirty (30) feet, street facing side (Crawford Lane), twenty-five (25) feet, rear yard, thirty-five (35) feet and side yard, ten (10) feet. The existing dwelling was built at the minimum setback requirements, therefore, leaving no room to construct the addition. The applicant has indicated significant hardship is due to health issues and this sunroom will provide additional living space needed for future use. The single family dwelling was built in 2005. Addition permit applied for and placed on hold pending action of the Board of Zoning Appeals.

Mr. Gibbons: Melody, I have one question. This is the only... I went to the property and met with the family and this is the only lot in this subdivision of this width. It is unusual that... and you are saying that it does meet the minimum of thirty-five (35)?

Mrs. Musante: The house currently meets the thirty-five (35) foot setback. Correct. They have used all of the buildable area because of it being a corner lot.

Mr. Gibbons: I understand. I just don't understand why it is the only lot of this width in the whole subdivision? That is what I found funny.

Mrs. Musante: We do not, unfortunately, look at subdivision plans when they come in for construction plans, preliminary plats, we don't get them until they come in for building permit. As you know, these developers and builders are trying to get as many lots out of these subdivisions and as long as it meets lot width.

Mr. Gibbons: I am not arguing with you.

Mrs. Musante: Right.

Mr. Gibbons: I found it curious that it was the only one.

Mrs. Musante: Right.

Mr. Gibbons: And you don't look at the subdivision plat?

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Mrs. Musante: We do not until after it is approved. We only get it upon building permit when they are coming in for their house construction.

Mr. Apicella: When was the thirty-five (35) foot setback determined or established? Has it been thirty-five since the establishment of the subdivision?

Mrs. Musante: It has, the rear yard for R-1 has been thirty-five (35) feet for some time. I would have go back and do some research on it to see exactly when that came into effect. It has been thirty-five (35) feet for quite some time for the R-1 district. It is not a new change.

Mr. Gibbons: And this is one of the things that we had talked about. Planned unit development, that is different than a regular subdivision. If he was in a planned unit development he would have been alright.

Mrs. Musante: If he was in a cluster development he would have been alright.

Mr. Gibbons: He would have been alright?

Mrs. Musante: Right.

Mr. Gibbons: Okay, any other questions?

Mr. Ingalls: I have a question. Currently on the size of the lot, the setbacks to the house as shown currently on this piece of information in our packet but I did not see a survey showing the house location. Does that provide... do you have one or?

Mrs. Musante: We do not currently have a house location. We did ask the applicant and they did not have one with their settlement papers. The corners were marked and the property pegs are in place. They took the measurements from the property pegs.

Mr. Ingalls: Okay, thank you.

Mr. Gibbons: Any other questions?

Ronald Rowe: Mr. Chairman and members of the Board, good evening, my name is Ronald Rowe. We have submitted a Variance justification as part of our application to this Board for review and we are respectfully requesting to grant a variance in response to a significant hardship related to a health condition that my wife has been diagnosed with. It is because of this hardship that we are respectfully requesting a nine foot variance. The strict application of the thirty-five (35) foot setback requirement prevents us from adding a twelve (12) foot by twenty-five (25) foot sunroom room onto our home. In 2008, my wife was diagnosed with an aggressive auto immune disease. Essentially, this condition is progressive and will worsen in the coming years. It will rob her of her mobility and is potentially terminal in that its affect will damage many of her organs and systems. It was our hope to improve our home with this addition so that we can accommodate my wife's health needs on the ground floor of our residence. This addition could be used to accommodate my wife as it is just steps away from our ground floor bathroom. Unfortunately, we were informed that due to the configuration of our lot we would not be able to make any additions to our home unless granted a variance by this Board. Our residence is located on a corner lot; the configuration of our lot is odd. The adjacent and perpendicular lots are bigger and extend beyond the thirty-five (35) foot setback requirement for backyards. Because

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of the larger size of other lots in the subdivision, homes that are the same model as ours are able to add a sunroom or an addition without the need of a variance, however, we cannot. When our home was purchased in 2005 we did not know that we would have to one day take into consideration a life altering disease that would affect my wife. That is why we need this variance, to make reasonable accommodations for her health needs. As part of our application, I have included three letters of support from residences in our neighborhood. This includes Mark and Gina Bender who would be most directly impacted by the addition of this sunroom. The Bender's home is at 18 Crawford and located directly behind our property. I would call the Boards attention to this photo. This is the Bender's home and this is our residence here. This was an existing deck that was put on by the builder and as you can see as indicated by the text, they do support this and that letter was included as part of your packet. Other letters of support are from Dave Pilar and Allison Whelan. Both Mr. Pilar and Ms. Whelan volunteer their time and efforts and take an active role in the Homeowners Association. Those letters of support were also included as part of our application. Mr. Chairman and members of the Board, we are respectfully requesting this variance because we simply do not have any other options to address the health needs of my wife with respect to living space. My wife and I are making this request with the intention of improving the value and appeal of our neighborhood and community. Furthermore, should the Board grant us this Variance, the sunroom would not take away from the aesthetics of the community nor would it be a detriment to neighboring properties. I have been recently informed, when I received packet, that there was an objection from a neighbor so if I could Mr. Chairman, I have ten minutes total, correct?

Mr. Gibbons: Yes.

Mr. Rowe: How much time do I have left, may I ask?

Ms. Hamock: Six and a half minutes.

Mr. Rowe: I would like to use the balance of time just to address some of the rebuttals that were expressed in the ten points that were submitted by the objector. The first, regarding the public record disclosure not showing myself as an owner, the Commonwealth of Virginia has taken great measures to protecting the breach and disclosures of personal information of citizens including law enforcement professionals. I am a federal law enforcement official. I would like to say that just because somebody can't find something on the internet doesn't mean that it doesn't exist. In order to protect my family given the nature of my work, my information is not always available in public databases and the objector portrays himself to be astute enough to navigate the real estate record databases but apparently he wasn't aware of Virginia Code that bars the publication of law enforcement information in public databases. As far as the lack of medical documentation Mr. Chairman, I have here a sealed copy of my wife's... Supporting documentation of her illness. That was one of the points raised in the letter. I would be more than happy, if it would please the Board, to make this available for their review. However, I would ask that this be not part of the official record given that her medical records and her personal health history would be covered by Health Insurance Portability and Accountability Act (HIPAA) and the laws of the Commonwealth. However, that being said if the members would require it, I would be more than happy... I have received my wife's permission to be able to share this with the Board. I will refer to the Board during the interrogatories if they would like to review that. As far as letters of support, Mr. Chairman, there was an objection that was raised regarding the standing of those who gave this letter of support. Standing is defined by the "ability of a party to demonstrate the connection to an item", in this case tangible property. The objector was making the allegations that those who lend support to this project did not have the authority to make this claim on behalf of their household or their spouse. The objector, I guess, felt that they were not qualified to do so. He also

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referenced that they lacked sufficient knowledge to make that type of medical assessment. Mr. Pilar is actually a full time professional firefighter who works ambulatory first responder care and Mrs. Whelan is a home health care professional. I think they can demonstrate some basic knowledge of medical issues. The objector also went onto raise that neither of these parties had any type of basis to make some kind of determination on finances or the current status of the economy. I would submit to the Board that as far as the nation's economic crisis unless someone has been incommunicado since 2008, I am pretty sure everybody is up to speed on what the real estate markets are in this country. Mr. Chairman, I just want to say that one of the most egregious allegations in this was water damage that the objector attributes to landscaping on my property. The objector expects the Board to believe that the laws of physics do not apply to his property and water can travel in reverse up hill, up a twenty (20) foot high drainpipe. That is simply ludicrous. He asserts that the Leeland Cyprus trees that were planted in 2006 that have reached almost twenty (20) feet in height and border his property, clearly within my backyard and are adjacent to his property are the culprit for this bending of the laws of gravity and physics. Mr. Chairman, I would call the Board's attention to the photo submitted by the objector showing my twenty (20) foot high Leeland Cyprus trees on my property. If the Board does not have that readily available, I have it right here. This would be my Leeland Cyprus trees, this obviously demonstrates the elevation of his property being higher than mine, which I'm not sure how water can flow uphill. Recently, the objector's photo depicts that he has his own Leeland Cyprus tree located down in the corner of his property. I would also submit to the Board these photos taken on 1/30/11 by myself showing that the objector has several Leeland Cyprus trees on his property. In his objection letter he stated that Leeland Cyprus trees have water retention properties. Additionally, one of these trees is planted in the aforementioned areas by the allegedly shotely constructed shed that he states is on my property; this is the photo that he submitted as part of his. As you can see in the foreground of my allegedly shotely constructed shed is his Leeland Cyprus tree. I don't mean to belabor certain points to the Board but I found the letter inappropriate, very personal in nature and attacked my credibility and basically my reputation. May I ask how much time I have?

Mrs. Musante: One minute.

Mr. Rowe: In summation Mr. Chairman, the objector at some place and time decided in his mind to make this issue personal. He has made slanderous allegation that have absolutely no basis effect. I find his letter to the Board and his allegations highly inappropriate. It is one thing to be wrong and act in good faith, it is an entirely different situation when an individual determines with malicious intent that they will lie, mislead, misrepresent and misstate crucial facts in an effort to spread disinformation and disrupt order. Mr. Chairman we are making this request due to my wife's medical condition, that's it. We are not trying to pull one over as the objector alleged; we are simply seeking this Board approval for this granting of a Variance because frankly we don't have any other options at this time. I thank the Board for its attention in this matter.

Mr. Gibbons: How far... The depth of your sunroom pertaining to this deck. How far out from the deck would it go?

Mr. Rowe: It would be in place of the frame for the already existing deck.

Mr. Gibbons: How far is the depth?

Mr. Rowe: It would go out twelve (12) feet.

Mr. Gibbons: So the deck was what... ten (10)?

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Mr. Rowe: The deck was... yeah I think it was ten (10).

Mr. Gibbons: So the deck was ten (10), so in other words your distance would be an additional two (2) feet where the deck was still in place?

Mr. Rowe: No, I'm sorry sir, I misunderstood the question. The deck was at twelve (12) feet already. This was already existing framework of it.

Mr. Gibbons: So you are going to take the deck down and put the porch up?

Mr. Rowe: Yes sir.

Mr. Gibbons: And how far out would the porch go out? I must have misread this.

Mr. Rowe: It would be the same footprint. It would be the same.

Mr. Gibbons: When I was there is was the same footprint as the deck was?

Mr. Rowe: Yes sir.

Mr. Ackermann: the deck is twelve (12) by twenty-five (25)?

Mr. Rowe: Yes sir.

Mr. Ingalls: Is the deck footing for the sunroom?

Mr. Rowe: Yes sir.

Mr. Ingalls: So the deck, you're calling it a deck now, actually it was the footing for the sunroom?

Mr. Rowe: It will be, yes sir and of course we will built to whatever code is necessary.

Mr. Ingalls: The deck that we see in that picture that looks brand new, was that built for the purpose of a sunroom?

Mr. Rowe: No sir. This deck, this is the existing deck.

Mr. Ingalls: That is the existing deck?

Mr. Rowe: Yes sir.

Mr. Ingalls: That is not a current picture then.

Mr. Rowe: This photo was taken back in the fall.

Mr. Ingalls: So you built the deck... I guess I want to see a picture of what is currently there.

Mrs. Stefl: Larry, if it helps I have photographs from today.

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Mr. Ackermann: It is also on this photo here in the packet towards the middle.

Mr. Ingalls: I just see that in that picture it basically looks new but it's not.

Mr. Davis: You indicated that the foundation is already there, the deck is built on pilings of some sort?

Mr. Rowe: Yes sir.

Mr. Davis: A room, you would have to have a solid foundation. How would that connect to the ground?

Mr. Rowe: There will be the footers, we will pour new footers for the sunroom.

Mr. Davis: And it will be right on top? There won't be any crawl space or what?

Mr. Rowe: It will be on the postings, we are going to put additional ones to meet load requirements and then also we will, as far as the crawl space there will be lattice that goes underneath to prevent any type of access to below it.

Mr. Ortiz: So I am a hundred percent clear, what you have there is the same profile, symmetry, same dimensions that you are going to build the additional sunroom?

Mr. Rowe: That is correct.

Mr. Ortiz: So the foundation of that is any reinforcement that you are going to need to meet code. This structure that you are going to build will not only meet code but will be inspected to go through the standard process to build anything else or attachments to the home?

Mr. Rowe: That is correct sir. The plan is actually on hold pending the outcome of this hearing.

Mr. Ortiz: One other question Mr. Chairman?

Mr. Gibbons: Go ahead.

Mr. Ortiz: Based on the situation with your wife, I would assume that you are under oath and based on what you have in that envelope is true and accurate?

Mr. Rowe: That is correct sir.

Mr. Apicella: Mr. Chairman, the applicant offered and I would respectfully request to see the information in the packet.

Mr. Hudson: I know that under HIPAA you have to sign a waiver to see that information.

Mr. Apicella: Mr. Chairman, we attended a session yesterday provided by an expert on BZA issues and that person indicated that we could in fact, not only request the information on camera but ask specific questions because this is the reason why he is asking for the exception. Normally I just ask to see the documentation with information grayed out.

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Mr. Rowe: May I approach?

Mr. Apicella: Yes.

Mr. Ingalls: While he is looking at that, you heard me ask county staff about the dimensions of what is shown. You say the house is exactly thirty (30) feet from the front, exactly twenty-five (25) feet from the side, you say it is exactly ten (10) feet from the other side and I guess I have some doubts. Unless you can prove it, the fact that I am a survey engineer, if you were to measure the house without a survey and come up with exact measurements would be hard to believe without it. I am concerned that the numbers that you think it is to the best of your knowledge. If that house is a foot further back than the thirty (30) feet and we grant you a variance for what you are asking for and somebody says that well it is a foot further and then you are in violation again. I have concerns. I don't want to do something and then find out well what we did does not allow you to do what you want to do.

Mr. Rowe: I'm sorry sir, is there a question in that?

Mr. Ingalls: I guess if you're telling me that you bought a \$500,000 house and did not get a house location survey would be surprising to me.

Mr. Rowe: Alright sir, so...

Mr. Gibbons: My memory is pretty good on this. She bought it before you got married.

Mr. Rowe: I'm sorry was there a comment from the gallery? No comments, okay. Augustine Homes, obviously my wife, when I submitted or approached Mrs. Musante about, she checked my closing documents, I pulled out my closing documents, my wife's closing documents, our closing documents now, there was none to be had in there. So, in which case I had to free hand draw this but I can assure you that the nine (9) foot variance that we are seeking, we are seeking for the backyard is truly what we need, a nine (9) foot variance.

Mr. Ingalls: Because if I were to even think about approving this I am going to make a condition that you have a survey done to prove that you are not in violation.

Mr. Rowe: In violation of? Seeking more than what we need?

Mr. Ingalls: Right.

Mr. Rowe: And how much does a survey cost sir?

Mr. Ingalls: \$200.

Mr. Rowe: \$200, Mr. Ingalls if I could respectfully say I have paid \$200 to obtain a permit and I paid \$600 to appear before this Board. I think I have given my pound of flesh, I can tell you that I need nine (9) feet for this but if it pleases you to earn your vote, I am willing to do whatever I need to do. However, I just would note that your requirement mandates me to acquire a survey at an additional cost. If it needs to be done then so be it if that is a condition of your order. However, I just want to make you aware of the extensive outlays that we have already put into this project.

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Mr. Ingalls: I understand that it is not a cheap thing and I know but at the same time that is the only way that I would look at it. If I were to even consider it, I know that what you asked for to be gotten in okay.

Mr. Rowe: Yes sir.

Mr. Ingalls: We have asked this before by asking people to approve it, give the county something that says you've done it according to what you were granted. It is a pretty simple and easy request, I can assure that I get paid nothing for coming here and paid nothing for thirty (30) years so.

Mr. Rowe: I appreciate Mr. Ingalls service then.

Mr. Gibbons: No, but what I think he is trying to say though is that say for example there could be... say there is an error...

Mr. Ingalls: It could be two or three inches.

Mr. Gibbons: then you would have to go through the whole process again.

Mr. Ingalls: Then you have to spend another whatever whatever whatever...

Mr. Rowe: Sure thing.

Mr. Ortiz: So it is actually in your best interest.

Mr. Rowe: Okay.

Mr. Ingalls: So if I was you I would get the survey done before I get the addition so you already know that when I do I am going to be okay.

Mr. Rowe: Yes sir.

Mr. Ingalls: It is pretty easy for the guy to come back and say that I am adding this addition on and add that to the thing. It would cost a little bit more to come twice but I would not do that addition without the survey to know that I am building it right because you don't want to build it wrong.

Mr. Rowe: Yes sir.

Mr. Ingalls: I mean, we saw they cut off six inches of a house.

Mr. Gibbons: They had a house down in what county was it? The Steele case, Fluvanna, the Supreme Court made them take six inches off the house because it was over the boundary. That is what you learn from an expert. Any further questions? Steven are you satisfied with what you saw?

Mr. Apicella: Yes I was.

Mr. Gibbons: Any questions there.

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Mr. Hudson: I will just add that it would be appropriate if we were to grant it, for you benefit, to get the survey. You would not want to ask for twelve (12) feet and it wind up being twelve and a half (12 ½) then you end up being out of compliance. If you do ever want to sell the house, you would not want to be out of compliance.

Mr. Rowe: Yes sir.

Mr. Ackermann: I have a question.

Mr. Gibbons: Okay.

Mr. Ackermann: So the sunroom, according to this sketch, is essentially a one story construction?

Mr. Rowe: That is correct sir.

Mr. Ackermann: There are no plans to make it... What would be or could he make it a two-story construction?

Mr. Gibbons: I don't think... for a porch or a sunroom, aren't there different restrictions? No.

Mr. Ackermann: I mean, so it is possible if we grant the variance he could make this the whole side of the house?

Mr. Rowe: Mr. Ackermann, there are no plans.

Mr. Ackermann: I know there are no plans. I just want to know what the possibilities are.

Mr. Gibbons: We can make that a condition.

Mr. Ackermann: What are the possibilities? Educate me please.

Mrs. Musante: As long as he builds the addition to code and he meets what you grant as a variance, he could put a second story on that unless you made it as a condition as Mr. Gibbons was stating.

Mr. Ackermann: Okay.

Mr. Rowe: Mr. Ackermann, we would be more than happy to have that as part of the condition.

Mr. Ackermann: I was just wondering what the possibilities are. Variances goes with the property?

Mrs. Musante: Yes.

Mr. Ackermann: So someone else could do a two story unless... Can we put a condition on it to keep it at one-story addition.

Mr. Ingalls: Of course, I would probably take a stab that the application before us tonight is for a one-story addition.

Mr. Gibbons: That is what he said in the application. He is under oath.

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Mr. Ingalls: Well, I assume he has to build a one-story too but also I do not mind putting conditions on things to make it simply and reasonable enough for people to understand that this is what we are granting. There are times that we have said we are going to grant the variance based on what is presented and he is presenting a one-story to be sure and positive that we... The next person may come along and think they can build a second story.

Mr. Rowe: Yes sir.

Mr. Gibbons: Thank you very much.

Mr. Rowe: Thank you Mr. Chairman.

Mr. Gibbons: We will be right back with you for rebuttal. I will open the public hearing. Is there anybody who would like to speak for this application? Hearing none, would anybody here like to speak against this application?

Paul Waldowski: Paul Waldowski, I own the property right next door and the only way I found out about this application, I did not read about the public hearing, I got two letters from the county. The letters that he talks about, two of the applicants do not owe adjacent or adjoining properties. My issue with this property is that the lot was not geared for sunrooms. Webster defines a sunroom as "a glass-enclosed porch or living room with a sunny exposure" also called a sun parlor. I have an issue with someone putting a sunroom on a six (6) by six (6) stilts. That is the issue here, you are going to put lattice around it. If you look at my pictures in my twenty-two (22) page, you will see the existing houses have additions that were made correctly by the builder. And yes, I even put in there what my property inspector found, water does go to its weakest link and it went up and I documented it. I already had to build a French drain on the right side of the property and I will have to build a French drain on the other side of the property. This guy puts one and a half inch tubing from his sump pump so it comes right into my area. I have pictures of where he has it connected and where he has it non-disconnected. So my whole concern is about construction and the aspects of his piece of property. There is an openness factor that could attract cats, mice, skunks, all kinds of other aspects. If you really read my letter, I brought out ten points of variances for life. I am not questioning the hardship because I did not know the medical aspects. It is the old adage, it is what you don't know that scares you but I do a lot about the property. Some of the other aspects that he tried to justify is looking at me paying for a house that I bought in a short sale. That is not my issue about... if you have a financial issue that you can't even spend \$200 for a survey so they could do the job right the first time. That is all I am asking. I am not trying to rewrite the law, I am just trying to use the existing law and do what is right for my family. I've worked fifty-eight (58) years to get the piece of property I have today. I am not going to let someone come through with some short cut methodology and try to get a variance for life on a piece of property. If you look at it from an aerial view you will see that there is no way you should build a sunroom there. Thank you.

Mr. Gibbons: Let me ask you a question. If you are saying that the construction bothers you Paul?

Mr. Waldowski: Yes.

Mr. Gibbons: Okay. What in the construction would amend some of your fears?

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Mr. Waldowski: Well, let's look at some of the construction things that are already there. The shed doesn't even have the same color as the siding, if you look at other in the HOA they even have the correct siding. I am just... If you look at the deck that was built... when I initiated this I saw this deck being torn apart and there was no building permit so I am the one who made the phone call and whoever was doing that, that is probably how this all started. I really don't know the aspects but I was concerned, I initially thought that they were improving the deck. I thought they were going to make a trex deck or do some other aspect. I mean, when you don't get letters from the five (5) people that get contacted by the county then what kind of fear do you have? Why are you going to get letters from two other people who don't have adjoining or adjacent property? Only Mark and Gina are the ones who wrote a letter.

Mr. Gibbons: You were saying about the construction, what in the construction of the sunroom... what would encase it around... you said the lattice work, is that what you...

Mr. Waldowski: I don't know the environmental aspect of this Bob. I bought pre-existing conditions on my house and I didn't really figure out why I had that water aspect over a year ago until we found it in a home inspection. You know you don't really know until you go through the public works and really find out about the type of soil, what is the weight factor and we have a small lot; it is going to come one way, it is going to come sideways toward me. And the County already put... I put one of the pictures, they had to build a whole new water aspect after Augustine left the subdivision right in back of 4 & 8 Pickett Lane, Gina's and Mark's, all in there. I don't even know if there was flooding in some of those basements so that is all I am bringing up. Water scares me more than anything and without... new construction is hard enough, when you try to do construction that is my concern.

Mr. Gibbons: Okay, thank you.

Mr. Apicella: Mr. Chairman, I have a question. Based on your letter, is it your contention that 100 percent of the neighbors impacted by the matter have to agree to that?

Mr. Waldowski: Yes I think by law, we all can't read public hearing Steven and the law protects us as homeowners in case someone... let's just say someone was really trying to jerry rig something okay. I am not saying that the applicant is trying to do that but when I read an application and I come see it and I see only one owner out of the five (5) that are contacted in the application, I have a real issue.

Mr. Apicella: Okay, thank you.

Mr. Gibbons: Any other questions? Thank you. Now you have a three minute rebuttal.

Mr. Rowe: Thank you Mr. Chairman. As far as that short sale, I have only had one verbal exchange with the objector and that was in May of 2010 and after a ten minute diatribe of demonizing the idea of Homeowners Association, he proceeded to disclose to me "I got this on a short sale, do you know how hard that is?" The objector then went on to insult my wife, at which time I terminated the conversation, I have never spoken to him since. Whether he got this on a short sale, I am happy for him, that's outstanding. I made no reference as far as why we are seeking this variance tied to financial, what I said was due to my wife's medical issue is why we are seeking this variance. As far as the shed and the pests, I would like to address that. Mr. Chairman, we have our lawn treated monthly for pests, we purchased this shed from the Amish, most of the retailers in this area go to the Pennsylvania Dutch Country to purchase sheds, barns and other buildings. He alleged in his letter that this was shotely built, I would submit to the Board that the Amish are pretty good craftsman and have been since the

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18th century in this county. Lastly Mr. Chairman, as far as his objection, the thirty-five foot setback for backyards is to protect abutting property owners. That would be property owners who abut the backyard, not the side yard. As I previously stated, the owners of 18 Crawford are the owners that are most affected by the granting of this variance and they emphatically support this project and stated this in a letter that the Board has reviewed. With that being said, the objector does not have a leg to stand on with his claims, the side yard setback between my property and his property is pursuant to code, this man has chosen to take a malevolent interest in my affairs, he is well known to officials in this County, I stand here before you tonight to say that I will not tolerate his personal attacks, his baseless allegations and his attempt to bully and intimidate those who do not acknowledge that he, in fact, is a legend in his own mind. I don't mean to come across mean spirited to the Board but I have really taken great offense in the letter that he submitted to this Board for its review. I take it personally, I have not made any personal claims or attacks on this man since the moment that he moved in last year. I thank the Board for its attention in this matter and with that I will yield.

Mr. Gibbons: Do you have a question?

Mr. Ingalls: I guess it seemed to me that he was concerned about the foundation. Can you describe to me again what am I going to see at the foundation, what am I going to see?

Mr. Rowe: There will not be any open area, we will enclose it off. You are going to see siding that goes all the way down.

Mr. Ingalls: So I won't see under this?

Mr. Rowe: No sir, you will not. If I may, I have an eighty (80) pound mischievous black lab, when we had our deck we had lattice around it to keep insects, anything cats, stray dogs whatever, we also have a fence in our backyard. We are one of the few houses that have a complete fence because of my dog. I even have lattice around the base of the shed. This shed is up off the ground on blocks, we are very cognizant with keeping whatever wildlife from gaining access to any crawl space or anything.

Mr. Ingalls: So what I am going to see when I go out and look at it, I am going to see a finished product going all the way to the ground with no opening other than air circulation vents? Basically it is going to be enclosed sufficiently so that animals, I have a deck and I have a nice raccoon that lives underneath there.

Mr. Hudson: I have a possum under mine.

Mr. Ingalls: I think that is what he was trying to say, I thought. Melody, can I ask you one question?

Mrs. Musante: Yes sir.

Mr. Ingalls: The shed, that is an accessory structure?

Mrs. Musante: Yes it is.

Mr. Ingalls: What are the setbacks on that? Does that shed meet the accessory structure setbacks?

Mrs. Musante: The shed has not been discussed. It is five (5) feet from the side property line and five (5) feet from the rear property line are the setback requirements.

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Mr. Ingalls: And he meets that?

Mrs. Musante: I do not know that, this is the first we have had discussions on the shed.

Mrs. Stefl: Would you like a picture?

Mr. Ingalls: I saw that but I couldn't tell...

Mrs. Stefl: I took pictures of where the shed is to the fence if that would be helpful.

Mr. Ingalls: Did you see it?

Mrs. Stefl: Yes I did sir.

Mr. Apicella: While you look at that, this is accurate depiction of what you are planning on doing?

Mr. Rowe: May I? That is the drawing? My eyesight is not what it used to be. Yes sir.

Mrs. Stefl: It barely measured a foot if that is helpful to you sir.

Mr. Ingalls: Thank you.

Mr. Apicella: But that is not the matter today?

Mrs. Stefl: But that is not the matter.

Mrs. Musante: Correct.

Mr. Ingalls: The requirement for shed is considered an accessory structure and defines as too close to the property, rear and side?

Mrs. Musante: Correct.

Mr. Ingalls: Again if I were to consider to approve this, I would say that we make the shed compliant. It is probably movable enough that you move it.

Mr. Rowe: Okay.

Mr. Gibbons: Okay.

Mr. Ingalls: Let me ask, I want to hear it one time. What is your hardship for this variance other than the financial stuff, we all have that. Can you just tell me what is your hardship and why you need this?

Mr. Rowe: Essentially sir, my wife has an autoimmune disease that will affect her mobility. We have a two story home right now. She is going to have mobility issues; our intention here is that we are planning for the future and we are planning right now so that we can at least have this area to accommodate her now and in the future so she does not have to go upstairs. This is something that is degenerative and life threatening.

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Mr. Ingalls: That is what I wanted to hear.

Mr. Gibbons: Okay.

Mr. Davis: Some of this may not pertain to the issue that they are here for and that we are here for a variance. I would like to state that we are not responsible for the color of the shed, we are not responsible for animals and all that kind of stuff, we are responsible for making a variance based on a hardship and the code. That is it and that is what I base my decision on.

Mr. Ortiz: Mr. Chairman, just really for summary in my mind...

Mr. Gibbons: Wait, if nobody has any further questions I will close the public hearing.

Mrs. Stefl: I have one question if I am allowed to ask.

Mr. Gibbons: Yes, go ahead.

Mrs. Stefl: You did say that your wife's mobility would be affected. What exactly are the needs to modify the home for, say, a wheelchair ramp or something like that, will he also need to come before us because this is a very small lot... because you will probably want access possibly outside so she would have to exits to the home or something?

Mrs. Musante: We allow, due to ADA requirements and regulations, handicap ramps and accessories like that to encroach because of the ADA requirements.

Mrs. Stefl: Okay, so that will not be an issue at that time either?

Mrs. Musante: It will not be an issue.

Mrs. Stefl: I am just trying to foreshadow for him so he does not have to apply and come before us again.

Mrs. Gibbons: Any other questions? Okay, thank you sir.

Mr. Rowe: Thank you Mr. Chairman.

Mr. Gibbons: Okay, I will close the public hearing and bring it back to the board. What is the wish of the Board?

MOTION:

Mr. Hudson: Mr. Chairman, I probably could make the proper motion but I make a motion to grant this Variance and I would also want to add on the restrictions that Mr. Ingalls spoke of for the benefit of the applicant, that he have a proper survey done. If we grant him twelve feet and its twelve and a half then he is going to be paying for it and tearing it down. Listening to the conversation about it, I certainly have sympathy with neighbors with water problems, I live at the bottom of a hill, you know and water from the hill and I don't blame my neighbor came all the way through his yard and into my swimming pool and muddied up my water and it cost me hundreds and hundreds of dollars but it wasn't my neighbors fault, it rained. The square footage of this sunroom is not going to create any

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more water than what is falling from the sky. The water that comes there and a lot of these new homes around here, I've noticed, have sump pumps and some people have wet yards but I can't blame the buyer of the house that has the sump pump in his basement that pumps water out of his house, it is the geo-graphics of the property. It looks like to me that it is pretty well maintained lot. I am making a long motion, I am rambling a little bit but I wanted to put the motion on the table.

Mr. Apicella: Mr. Chairman, will you accept a friendly amendment?

Mr. Hudson: Yes.

Mr. Apicella: I think Mr. Ingalls pointed this out, limited this to a one story.

Mr. Gibbons: The doctor actually pointed that out.

Mr. Apicella: I'm sorry.

Mr. Gibbons: Okay, so we have the two items that came up and what about the discussion that the construction would be to the ground, right?

Mr. Ingalls: Would the foundation be completely covered or some statement of that...

Mr. Hudson: Yes, the testimony was that but we can make it part of the motion.

Mr. Ingalls: I would also say that the shed would be put into compliance if it is not already there in terms of location.

Mr. Gibbons: Okay.

Mr. Ingalls: Otherwise somebody is going to say that his shed is not in compliance and he would have to move it or come back here to get a variance.

Mr. Ortiz: Mr. Chairman, are we dealing with an extension in granting the Variance or are we dealing with the shed?

Mr. Gibbons: Well, it was discovered so...

Mr. Hudson: I would say in light of neighbors having to live beside each other, I think it is right if we can do everything right the first time and I think Mr. Ingalls makes a good point, why be back here over a shed?

Mr. Gibbons: He has been doing it for thirty years so he wouldn't change. We need a second?

Mr. Ortiz: I second.

Mr. Gibbons: Seconded by Mr. Ortiz. Any further discussion? All in favor...

Mr. Ingalls: Mr. Chairman, I am going to support the motion because I do believe that the hardship test is met by the medical condition and there is a substantial amount of evidence that proved the hardship and that is the reason that I am going to support the motion.

Mr. Apicella: Mr. Chairman, I to will support the motion. I believe that the applicant has made clear and convincing argument that there is a medical condition and provided that to us there to. This is one of those rare circumstances where the hardship test is fully met, failure to provide relief would

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significantly and adversely limit the use of their property. For those reasons I would support the motion.

Mr. Davis: Same.

Mr. Hudson: I have to say Mr. Chairman, as a father of a multiple handicapped son that I have in my home, I understand the medical issue and totally think that what he laid out and why he needed it makes appropriate sense. I know that we have stood here before and have heard Variances from people that were trying to get them a break and this is totally appropriate and that is why I made that motion.

Mr. Gibbons: All in favor say aye.

Mr. Ackermann: Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All opposed? Motion carries.

VOTE:

The motion to approve the Variance passed 7-0.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Mr. Ortiz – Yes

Mr. Gibbons: Item number three.

3. **SE11-1/1100001 - CHANDERGAPT BAJWA** - Requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards", A-1, Agricultural, to allow electrical contracting as a Rural Home Business on Assessor's Parcel 34-43. The property is zoned A-1, Agricultural, located at 2378 Warrenton Road.

Mrs. Musante: Case SE11-1/1100001, Chandergapt Bajwa, requests a Special Exception per Stafford County Code, Section 28-35, Table 3.1 "District Uses & Standards", A-1, Agricultural, to allow electrical contracting as a Rural Home Business on Assessor's Parcel 34-43. The property is zoned A-1, Agricultural, located at 2378 Warrenton Road. You have the application, application affidavit, plat prepared by SDI dated 12/7/10, construction plans of storage building, copy of the building permit

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application, tax map and vicinity map. The applicant is requesting a special exception to operate Electrical Contracting as a Rural Home Business. Days and hours of operation will be Monday through Friday from 7:00 AM to 5:00 PM. The applicant is requesting fleet parking of six (6) to eight (8) vehicles. The business is currently operating from this location and employs six (6) people who do not reside on the premises. This is a violation of the rural home business standards as they only allow for no more than three (3) employees other than family members residing in the principal residence to be employed in the business. They can employ off-site employees as long as they do not come to the property. The applicant has indicated there is existing vegetation along the front and side property lines screening the business from public view. This single family dwelling was built in 1956. Building permit application submitted October 2010 to construct a thirty-eight (38) by fifty-five (55) (2090 square feet) storage building. This permit was approved by Zoning and Building but failed the Chesapeake Bay review as the limits of clearing and grading exceed 2,500 square feet as shown on the plan submitted with the building permit application. 2,500 is the minimum allowed without requiring a grading plan and permit. The applicant was notified by Public Works of these requirements. It was brought to Zoning's attention that a business was operating from this location. A zoning violation was not issued at this time as the applicant proceeded with this application for a rural home business.

Mr. Gibbons: Let me ask a question. There was a question on residence?

Mrs. Musante: Okay.

Mr. Gibbons: Is this your legal residence? Do you live on this property?

Mr. Bajwa: Yes sir. Actually I have two properties.

Mr. Gibbons: No, the question is, are you residing on the property that you requested the zoning?

Mr. Bajwa: I don't know the definition of residing. I sleep in that place and I have another house in England Run about six (6) miles away from there. I sleep in there also as well. Since my property is there, my machinery and tools are there I do sleep in that place too.

Mr. Gibbons: You did explain to him that when you file for this, this has to be your primary residence.

Mrs. Musante: Yes I did.

Mr. Gibbons: Okay.

Mr. Bajwa: The reason for that one sir is that... I am not a good speaker so bare with me.

Mr. Gibbons: No that's fine.

Mrs. Musante: Excuse me, if he is going to start speaking he needs to state his name and address unless you all have questions more of me first.

Mr. Bajwa: My name is Chandergupt Bajwa and I reside at 2378 Warrenton Road, Fredericksburg, VA 22406. I also have a residence at 19 Brushy Creek Circle in Fredericksburg. I own a business name Electrifiers' Inc. I would like to make one correction in the letter that there are six (6) employees and they do not reside there. There are not six (6) employees, it is me and the other employees. They don't come to the office, they don't work in the office. The office work is done by me doing estimating and some field work and my wife does the accounting. There are two people who reside there and do the business. There was some kind of error in there, I am sorry about that.

Mr. Gibbons: Any questions?

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Mr. Bajwa: I have been in business since 1989, I moved here from Woodridge, I would take over my business from my house since then and I moved here in Stafford County in 2006 and I have been running the business since then over here. That is all I can say, I can answer any questions.

Mr. Gibbons: Okay.

Mr. Davis: I think that Melody indicated to you that on your site plan that you needed to put all structures, all building and there are photographs that Melody has provided to you that shows the property. There is another dwelling there.

Mr. Bajwa: Yes sir, that existing structure was built back in 1995. It's not a new one.

Mr. Davis: No, I know that. There are also six vehicles there, one vehicle is on blocks, two other vehicles beside it are inoperable, license plates are out of date, then there are three vehicles in back and most of all there are two storage buildings that I think are probably in violation. There is a lot of stuff stored outside, there is equipment there that is stored. I am not sure what the requirements are in this district. I have also talked to the neighbor there and they indicated that no one resides in that building in that house. I have been by there, I live within two miles and I have been by there several times and have not found anybody there in the evening. The lights would be on if there was somebody living there and there are no lights inside. There is a large flood light outside. For these reasons, I can't support this request.

Mr. Ortiz: Mr. Chairman, I have a couple questions. How big is the acreage?

Mr. Bajwa: It is five point six (5.6) acres.

Mr. Davis: What is that zoning?

Mrs. Musante: A-1.

Mr. Ortiz: What is that limitation or requirement for vehicles on the size of that type of acreage?

Mrs. Musante: We don't restrict the number of vehicles because he is allowed to have fleet parking if you all grant the Rural Home Business. Unless you put a limit of the number of vehicles he has.

MR. Gibbons: Do we define what fleet is?

Mrs. Musante: We do. Fleet parking: "Parking and storage of more than five (5) operable vehicles, other than automobiles, which are used in the daily operations of a business not located on-site; or, the parking and storage of more than one vehicle with a gross vehicle weight in excess of ten thousand (10,000) pounds. This is not to be construed to include parking and storage of farm vehicles or equipment, or construction equipment such as bulldozers, front loaders, backhoes and similar devices which are not licensed to operate on state roads".

Mr. Gibbons: Does it specifically say a use?

Mrs. Musante: It does.

Mr. Ortiz: Can you say that part again concerning bulldozer's, pertaining to heavy equipment and things like that?

Mrs. Musante: This is not to be construed to include parking and storage of farm vehicles or

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equipment, or construction equipment such as bulldozers, front loaders, backhoes and similar devices which are not licensed to operate on state roads.

Mr. Ortiz: Okay, so they can be there?

Mrs. Musante: Correct.

Mr. Gibbons: Any other questions?

Mrs. Stefl: I guess my question is when you applied for the permit, did you list the Warrenton Road or Brushy Creek for the address of the permits?

Mr. Bajwa: I don't remember.

Mrs. Stefl: Because I called zoning today and they stated that the address listed is the 19 Brushy Creek so I take issue to whether or not this is actually occupied and thus...

Mr. Bajwa: The reason is that we are only four (4) people, two (2) kids, my wife and myself. Originally, we were at Venture Drive off Courthouse Road in 2006. We signed a contract for that property and we hired an attorney who is a real estate attorney, he found some problems with the property, there were some zoning issues and so forth but I already had a contract on it. I decided since I already had the property here for business I decided that I would buy a house in England Run. Now I have a house and when we found the problem with the industrial property we had to back off that contract and the house was already built so I had to move out here to the house. Now I have a house here and the business in Woodbridge, now I had to move out here, I couldn't get industrial property at that time so we decided to sell the England Run house and buy a property here that we could live and operate a business from. That was the intention, since the market went down on the housing, we can't sell the house. I have a house in Woodbridge that I can't sell, I can't sell England Run and now I have the third property. I can't live and sleep in three houses, I have to sleep in only one place. All these houses are in my name.

Mr. Gibbons: What does the application say?

Mrs. Musante: The application...

Mrs. Stefl: When I called planning they stated the 19 Brushy Creek today but I don't have evidence of that. That is just... But I mean his wife's name is listed at the 19 Brushy Creek.

Mr. Gibbons: Yeah but the application here says 2378 Warrenton Road.

Mr. Apicella: Mr. Chairman, he has already testified that that is not his primary residence.

Mr. Gibbons: I know.

Mr. Hudson: Help me to understand a little bit better of what happened on the building permit when building the building out there?

Mr. Bajwa: We have applied for the building permit and building permit is on hold until this...

Mrs. Musante: That's correct. We actually approved the building permit because when it came through it just looked like a typical storage building to us with no information on it that an actual business was being operated from there. When it went through the Chesapeake Bay review, they found out that it was more than 2,500 square feet by the time he did all of the grading. At that time is when

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we found out that he was actually operating a business in that location.

Mrs. Stefl: So he never applied for a Rural Home Business Occupancy Permit?

Mrs. Musante: Correct.

Mr. Hudson: Where is the building at this point?

Mrs. Musante: It is on hold. The building permit application is actually right in my hands.

Mr. Ackermann: And how does what we do tonight affect him?

Mrs. Musante: If you deny his Rural Home Business application, he will have to cease operating the electrical contracting from that location. He could still go through with the building permit, we cannot stop him from building this building. He would have to do the grading plan, which is what he has been directed to do. It would just be an enforcement issue that he does not continue the business.

Mr. Ackermann: So whether we grant the Special Exception or not, he still has choices?

Mrs. Musante: Correct.

Mr. Ackermann: He still cannot build the building without following the grading plan?

Mrs. Musante: He still has to do the grading plan because of the size of the structure.

Mr. Ackermann: So it is not dependent on what we do?

Mrs. Musante: No, it would be an enforcement issue.

Mr. Ortiz: I guess the question at hand is if it is not his permanent residence than he does not meet it?

Mrs. Musante: That is correct.

Mr. Ortiz: And I guess you were aware of that, right?

Mr. Bajwa: Yes sir. As I said I have three houses so I can call all three houses my house but I can sleep in only one or two places at a time. So to have a primary residence, I would spend more time at Warrenton Road than at Brushy Creek.

Mr. Gibbons: But there is nothing to prevent him from filing his own application?

Mrs. Musante: A zoning application for?

Mr. Gibbons: A request to rezone the property?

Mr. Davis: Rezone the property?

Mr. Gibbons: There is nothing to prevent him from going and filing a zoning application.

Mrs. Musante: We would have to check to see if the Comprehensive Plan would.... But sure he could do that.

Mrs. Stefl: But would our denial prevent the... if he has to cease from operating his business and it

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was zoned B-1, M-1 or whatever the classification needs to be, he could then open his business at that time?

Mrs. Musante: Correct.

Mrs. Stefl: Of the zoning?

Mrs. Musante: Correct.

Mrs. Stefl: Okay.

Mr. Ortiz: If we vote against his request, as you just stated he is going to have to stop his business.

Mrs. Musante: That is correct.

Mr. Apicella: Well stop running his business from that location.

Mr. Ortiz: Running it from that location.

Mrs. Musante: Correct.

Mr. Ortiz: Which he has multiple vehicles, etc. etc. etc.

Mrs. Musante: That is correct.

Mrs. Stefl: But it doesn't prevent him from working, he just can't store the vehicles there?

Mr. Apicella: Why wouldn't he be able to store the vehicles there, it is an operational issue not the storage of the vehicles. He owns the property, he has the entitlement to keep vehicles on that property, right?

Mrs. Musante: We get into the definition of what a commercial vehicle is, which would prohibit him from keeping the vehicles there based on the definition of a commercial vehicle. We also have the enforcement issue of the inoperable vehicles, I believe that Mr. Davis brought up. We would have to go on that after him on the inoperable vehicles as well.

Mrs. Stefl: Well Mr. Chair, I still am a little bit confused on whether or not this is a hardship because he can still perform his duties as an electrician but just not from his home if we deny it?

Mr. Apicella: This is not a Variance, this is a Special Exception.

Mrs. Stefl: Okay, I'm good.

Mr. Hudson: Quick question, is that building going to be completed and meet the standard of the grading for what the Chesapeake Bay requires?

Mr. Bajwa: Yes sir.

Mr. Hudson: Is there a timeframe for that?

Mr. Bajwa: Yes, we have the plans and submitted for the permit. It will be a storage building on a slab.

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Mr. Hudson: Do you know anything Melody about what the timeframe is?

Mr. Musante: As far as?

Mr. Hudson: The Chesapeake Bay approval part of it?

Mrs. Musante: It is going to stay on hold until he submits the grading plan and also he would have to have a grading permit.

Mr. Hudson: That is what I was asking, when are you going to get that for the grading plan?

Mr. Bajwa: The grading plan was submitted, I think with the application.

Mrs. Musante: I am not sure whether this plan that was actually submitted to you was approvable through our department for an actual grading plan. This was done basically to submit for your review of the Special Exception. If you all do not grant him the Special Exception, he still can go forward with building that building. He still has to follow the same process, submit the grading plan, get the grading permit based on the size.

Mr. Gibbons: He cannot operate the business?

Mrs. Musante: Correct.

Mr. Hudson: That is kind of the point that I was getting at. He could build it anyway.

Mrs. Musante: He can. That is when it becomes an enforcement issue on our side from a zoning standpoint. To make sure that he is not operating the business there.

Mr. Ortiz: I am going to make an assumption, if we deny this and he cannot operate his business there, I am assuming that the storage facility probably won't get built. Is there any more information about rezoning this property to a commercial zoned area? Are the properties adjoining you, are they commercial?

Mr. Bajwa: No sir.

Mrs. Musante: It is residential, A-1.

Mr. Gibbons: They are all A-1?

Mrs. Musante: They are.

Mr. Davis: Mr. Chairman?

Mr. Gibbons: Yes sir.

Mr. Davis: I make a motion that we deny this Special Exception for the Rural Home Business.

Mr. Gibbons: Let me close the public hearing.

Mr. Davis: Sorry.

Mr. Gibbons: Any more questions of the applicant? Is there anybody in the audience for or against this application? Seeing none, then I will close the public hearing and bring it back to the Board.

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MOTION:

Mr. Davis: I make a motion that we deny this Special Exception for the Rural Home Business at this address.

Mr. Gibbons: I have a motion on the floor.

Mr. Apicella: I will second.

Mr. Gibbons: Discussion?

Mr. Ackermann: Mr. Chair, I would support the motion. I think the primary issue is his primary residence. It is not clear that it is and the properties surrounding it are all zoned A-1. On the aerial map you see that several of them have residences on them, houses on them and in keeping with the nature of the neighborhood and the property. There are not any businesses there.

Mr. Apicella: Mr. Chairman, I am looking at the application and the information that was provided by staff, which identified what is a proper Rural Home Business. I find that this particular property as it is currently being used is not meeting the basic threshold requirements to be considered a Rural Home Business. I certainly understand the applicant's quandary.

Mr. Ackermann: I want to say that too. It is a difficult decision because it is a difficult situation here.

Mr. Ortiz: For a point of clarification Mr. Chairman, for him to use his property as he is currently using it, he would have to establish residency and prove to the county that in fact is his primary residence?

Mrs. Musante: That's correct.

Mr. Ortiz: To do that, he would have to do what?

Mrs. Musante: That is a good question, this has been brought to the board before.

Mr. Gibbons: You have to go and change your residency to that address.

Mrs. Musante: Everything has to be changed to that address your utilities, your voter, your mail. Everything has to be and when we went through this a few months ago...

Mr. Gibbons: You had to prove that you were living there a majority of the time.

Mrs. Musante: Yes, we did, correct.

Mrs. Stefl: We had that attorney by the school.

Mrs. Musante: That's correct.

Mr. Apicella: There is a page that talks to what is a rural home business. It speaks to the amount of building that can be used for the business side of it and it seems to me that almost 100 percent is being used for the business side and not at a primary residence. So it would be a huge hurdle to overcome to even make this a primary residence for the applicant and his family.

Mr. Ortiz: I don't know anything about huge effort to make this a residence. I just want to make sure

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the applicant fully understands the decision that may come about and make sure it is clear that the reasons why and that for him to revert or change his position, he understands what the requirements are going to be.

Mrs. Musante: Okay.

Mr. Ortiz: That is my only concern that whether there is a language barrier or anything else, to make sure there is a complete understanding of what he is required to do to change his situation.

Mrs. Musante: When we sit down with applicants for these types of applications, that is something that we stress that they have to be living on the premises and it is said more than once, you have to use that as your residence.

Mr. Ortiz: I understand. I just want to make sure that this is clear because there are times that people ask question and people think of what it is and walk away with some confusion.

Mrs. Musante: Sure.

Mr. Davis: In the letter that you send out that indicates action taken, do you also indicate things that you can do that may be necessary to become a resident at that address or apply for a zoning change?

Mrs. Musante: Normally, we do not. In our approval or denial letters, we just state that you were denied, if it is a violation you have thirty days to cease the violation and that's it.

Mr. Davis: Can we get that information?

Mrs. Musante: We can.

Mr. Gibbons: I think that is a good point. Maybe when we have another amendment to the bylaws we can discussion actions taken. He has three properties and he is not saying that he doesn't have it and in economic times, so he understands that. So we have a motion. Go ahead Steve.

Mr. Apicella: I hear what you are saying, my concern about that is that it is up to the applicant or his legal counsel to fix his or her problem and to the extent that we provide additional information, we are giving them legal advice, which may be complete or incomplete and what culpability we have if he offers information on everything they need to fix their problem. I hate to say that it is not our responsibility to fix their problem, it is only our responsibility to approve or disapprove their request.

Mr. Gibbons: But it...

Mr. Apicella: I understand and appreciate their quandary. I am concerned about the slippery slope of trying to help this applicant or other applicants fix their problems.

Mr. Davis: I agree.

Mr. Ortiz: The point is well taken, it is just that you are not providing guidance. We are saying here are some of the requirements and you need to seek guidance to make sure that you understand completely what the issue is, that's all. We are not asking anybody to give legal guidance, we are not lawyers and that is not our position, I'm assuming.

Mr. Gibbons: But we are...

Mr. Ackermann: But we are stating the reasons why the record shows the reasons why we vote one

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way or the other. The applicant would be well advised to take that.

Mr. Gibbons: I think that is a good point because we had one before and where we heard the case three times and I finally felt comfortable. I think you made a good point.

Mr. Davis: I would like to say that I made the motion and I support the motion because I don't believe that this is a primary residence.

Mr. Gibbons: So we have a motion on the floor, any further discussion? All in favor say aye.

Mr. Ackermann: Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Abstained.

Mr. Ortiz: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye. All opposed? So we turned down...

Mr. Bajwa: I understand sir.

Mr. Gibbons: Get with Melody and see what is available to you. Maybe the Comprehensive Plan or something can give him...

Mrs. Musante: Yes sir. Mr. Bajwa, I will give you a call tomorrow.

Mr. Bajwa: Okay, thank you.

Mr. Gibbons: And thank you very much for coming.

VOTE:

The motion to deny the Special Exception passed 7-0.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Abstained

Mr. Ortiz – Yes

Mrs. Stefl: Yes

UNFINISHED BUSINESS

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4. Annual Report

Mr. Gibbons: Unfinished business, you all did a good job on the Annual Report. Dr. Larson had a few changes. I would like to send this to the Board of Supervisors unless anyone else has any objections to this.

MOTION:

Mr. Apicella: I will make a motion to that effect.

Mr. Gibbons: I have a motion on the floor, do I have a second?

Mr. Ackermann: Second.

Mr. Gibbons: All in favor say aye.

Mr. Ackermann: Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye.

VOTE:

The motion to approve the Annual Report and forward to the Board of Supervisors passed 7-0.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Mr. Ortiz – Yes

Mr. Gibbons: And Aisha, good work.

Ms. Hamock: Thanks and Melody.

Mrs. Musante: Hey, it was a joint effort.

Ms. Hamock: We both worked hard on it.

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Mr. Gibbons: I understand. Okay the next item should be the minutes.

OTHER BUSINESS

None

ADOPTION OF MINUTES

5. August 24, 2010

Mr. Gibbons: We have the 24 August 2010 minutes. Any changes?

Mr. Ortiz: Mr. Chairman, on line number 978, it should be “setting precedence”.

Mr. Gibbons: Okay. Any other corrections?

Mr. Ortiz: Also on line 2008 instead of “be” its “do”.

Mr. Gibbons: Any other changes? I will need a motion.

Mr. Davis: I will make a motion to approve the minutes.

Mr. Ortiz: Second.

Mr. Gibbons: Ray makes the motion, second by Mr. Ortiz, all in favor say aye.

Mr. Ackermann: Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye.

VOTE:

The motion to approve the August 24, 2010 minutes passed 7-0.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

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Mr. Gibbons – Yes
Mr. Hudson – Yes
Mr. Ingalls – Yes
Mr. Ortiz – Yes

6. September 28, 2010

Mr. Gibbons: Now we have the minutes of September 28, 2011, any corrections? Since I am complimenting you all, Mrs. Decatur stated that when you send over the records the files are very detailed and the judge appreciates that. I guess there are some in the area that don't go into detail with the records and when you get a tape or CD, it makes it difficult for the judge doing the research.

Mrs. Musante: Great.

Mr. Gibbons: All in favor of the approval of the September 28th minutes.

Mr. Ackermann: Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye.

Mrs. Musante: I'm sorry, who made the motion?

Mr. Gibbons: We need a motion for the approval of the minutes of September 28, 2010

MOTION:

Mr. Ackermann: So moved.

Mr. Hudson: Second.

Mr. Gibbons: Moved by Dr. Ackermann and seconded by Mr. Hudson. All in favor say aye.

Mr. Ackermann: Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

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Mr. Ingalls: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. All opposed?

VOTE:

The motion to approve the September 28, 2010 minutes passed 7-0.

Mr. Ackermann – Yes

Mr. Apicella – Yes

Mr. Davis – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Mr. Ortiz – Yes

ZONING ADMINISTRATOR REPORT

Mr. Gibbons: The Zoning Administrator's report we got at the beginning of the meeting. We don't have any applications for the month of February.

Mrs. Musante: We do not.

Mr. Gibbons: But the problem in the bylaws is that we have an annual meeting.

Mrs. Musante: Correct.

Mr. Gibbons: I would like to have an exception and move this to March.

Mr. Ackermann: I think that would be an excellent suggestion.

Mr. Gibbons: So we need a motion.

MOTION:

Mr. Ackermann: I move that our Annual meeting this year occur in March.

Mr. Apicella: Second.

Mr. Gibbons: Okay, all in favor say aye.

Mr. Ackermann: Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

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Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. Since there are no applications for February, we will not have the February meeting.

MOTION:

Mr. Hudson: I make that motion

Mr. Ortiz: Second

Mr. Gibbons: All in favor say aye.

Mr. Ackermann: Aye.

Mr. Apicella: Aye.

Mr. Davis: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Mr. Ortiz: Aye.

Mr. Gibbons: Aye. I want to thank you very much.

ADJOURNMENT

With no further business the meeting adjourned at 8:49P.M.

Robert C. Gibbons, Chairman
Board of Zoning Appeals